

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anthony Pascual	Team: Team # 1	CCRB Case #: 201500837	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/04/2015 8:00 PM	Location of Incident: Nevins Street Subway Station	Precinct: 88	18 Mo. SOL 8/4/2016	EO SOL 8/4/2016	
Date/Time CV Reported Wed, 02/04/2015 9:38 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/04/2015 9:38 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Schwaner	17838	929152	TB DT30
2. POM Thomas Marksberry	28033	927605	TB DT30

Officer(s)	Allegation	Investigator Recommendation
A.POM Thomas Marksberry	Abuse: PO Thomas Marksberry refused to provide his name and shield number to § 87(2)(b)	
B.POM Thomas Marksberry	Discourtesy: PO Thomas Marksberry acted discourteously toward § 87(2)(b)	
	§ 87(2)(g), § 87(4-b)	
§ 87(2)(b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(b)	§ 87(2)(g), § 87(4-b)	

Case Summary

On February 4, 2015, at approximately 8:00 p.m., in the Nevins Street Subway Station (Manhattan-bound platform for the 2,3,4,5 trains) in Brooklyn, § 87(2)(b) was stopped by PO Joseph Schwaner, of Transit District 30, for smoking an electronic cigarette within the subway station. § 87(2)(b) video recorded the incident on his cellphone from the beginning. PO Thomas Marksberry, of Transit District 30, was working with PO Schwaner and stood off to the side while PO Schwaner asked § 87(2)(b) for identification several times. After a few minutes, PO Marksberry started to approach § 87(2)(b) and PO Schwaner. § 87(2)(b) pointed his cellphone towards PO Marksberry and asked him for his name and shield number. PO Marksberry responded, "I am not giving you nothing." (**Allegation A**). PO Marksberry then removed his cellphone from his pocket, approached § 87(2)(b) with his cellphone held out, and placed his cellphone in close proximity to § 87(2)(b) cellphone. § 87(2)(b) expressed his discomfort with PO Marksberry's actions and asked him to back away. PO Marksberry disregarded § 87(2)(b) requests and continued to hold his phone in close proximity to § 87(2)(b). PO Marksberry then mocked § 87(2)(b) by repeating § 87(2)(b) requests that he back away, word for word, back to him (**Allegation B**). § 87(2)(b) was released without a summons. § 87(2)(g), § 87(4-b)

§ 87(2)(b) did not cooperate with the investigation (encl. G1); however, § 87(2)(b) provided video evidence of this interaction (encl. G2-6).

Case number 201500997 was created as a spin off to the Office of the Chief of Department regarding PO Marksberry recording § 87(2)(b) on his cellphone.

Mediation, Notice of Claim, and Criminal Histories

This case was eligible for mediation; however, the investigation did not have the opportunity to offer § 87(2)(b) mediation since he did not cooperate with the investigation. As of April 2, 2015, a request for any Notice of Claim associated with this complaint is pending with the NYC Comptroller's Office (encl. K1-2). § 87(2)(b) § 87(2)(b)

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- PO Marksberry has been a member of the service for 14 years and there are no substantiated CCRB allegations against him (encl. C1).
- PO Schwaner has been a member of the service for 13 years and there are no substantiated CCRB allegations against him (encl. C2).

Findings and Recommendations

Allegations Not Pleaded

Stop: PO Schwaner stopped § 87(2)(b) after observing him smoking an electronic cigarette on the subway platform. Individuals are not allowed to use electronic cigarettes in the subway system. NYC Administrative Code 17-503(a)(2) (encl. A9-12). § 87(2)(b) was not cooperative with the investigation. As a result, § 87(2)(b) did not confirm or deny that he was smoking an electronic cigarette in the subway. However, in a previous case (CCRB case number 201410262), § 87(2)(b) acknowledged smoking an electronic cigarette in a public park. Therefore, the investigation concludes that § 87(2)(b) was smoking an electronic cigarette in the subway.

Allegation A – Abuse of Authority: PO Thomas Marksberry refused to provide his name and shield number to § 87(2)(b)

Allegation B – Discourtesy- Action: PO Thomas Marksberry acted discourteously toward § 87(2)(b)

It is undisputed based on video that § 87(2)(b) requested PO Schwaner's name, shield number, and command, and PO Marksberry's name and shield number. It is undisputed that PO Schwaner provided his name and shield number and that PO Marksberry responded to the request by stating, "I am not giving you nothing." PO Marksberry did not provide his name and shield number after stating the above. It is also undisputed that PO Marksberry removed his cellphone from his pocket, approached § 87(2)(b) with his cellphone held out, and placed his cellphone in close proximity to § 87(2)(b) cellphone. § 87(2)(b) expressed his discomfort with PO Marksberry's actions and asked him to back away. PO Marksberry disregarded § 87(2)(b) requests and continued to hold his phone in close proximity to § 87(2)(b). PO Marksberry then mimicked § 87(2)(b) by repeating § 87(2)(b) statements word for word. § 87(2)(b) repeatedly talked over the officers during the incident.

PO Marksberry explained that he did not provide his name and shield to § 87(2)(b) because he believed that § 87(2)(b) was trying to bait him and PO Schwaner into playing his game, which PO Marksberry refused to do. PO Marksberry mimicked § 87(2)(b) as he believed that § 87(2)(b) was invading his personal space in that § 87(2)(b) was filming him and holding his cellphone close to PO Marksberry's face. PO Marksberry did not film § 87(2)(b) but he pretended to record to see § 87(2)(b)'s reaction.

Patrol Guide Procedure 203-09 states that officers are to provide their name, shield number, and command when asked by a civilian as well as to act courteously and respectfully during interactions with civilians (encl. A1)|

§ 87(2)(b), § 87(2)(g) § 87(2)(b)
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§ 87(2)(g)

§ 87(2)(b)
§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

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IS 87(2)(h)

[REDACTED]

Team: One

Investigator: _____ Anthony Pascual _____
Signature Print Date

Supervisor: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date